IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

No. 1333

MISSOURI PACIFIC RAILROAD COMPANY,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

BRIEF OF UNION PACIFIC RAILROAD COMPANY AS *AMICUS CURIAE*

By consent of the petitioner and respondent, Union Pacific Railroad Company files this brief as *amicus curiae.*

Interest of the *Amicus Curiae*

Union Pacific Railroad Company, as *amicus curiae,* has a substantial interest in this proceeding in that the decision of the Court below (Appendix C to the petition for writ of certiorari of Missouri Pacific Railroad Company in Docket 1333, also reported at 433 F. 2d 1324) adopts and applies legal principles and reasoning which are diametrically opposed to the legal principles and reasoning of that self-same Court in *Union Pacific Railroad Company* v. *The United States of America,* 401 F. 2d 778 (Ct. Cls., 1968;

cert. denied 395 U.S. 944 (1969); motion for leave to file motion for rehearing or reconsideration denied by Order of the Court of Claims February 5, 1971). Should the decision of the Court of Claims in *Missouri Pacific, supra,* be sustained, then that Court's decision in *Union Pacific, supra,* must be reversed. In this regard Union Pacific intends to file with this Court a petition for writ of certiorari to the Court of Claims with respect to that Court's denial, on February 5, 1971, of Union Pacific's motion for rehearing or reconsideration. In order that this Court's consideration of the inconsistent holdings of the Court of Claims on this issue be complete, Union Pacific, as *amicus curiae,* urges that the petition for writ of certiorari in Docket 1333 be granted.

Argument

As *amicus curiae,* Union Pacific submits that the granting of the petition for writ of certiorari in Docket 1333 is necessary so that the conflict between the Court of Claims decision in the *Missouri Pacific* case and that Court's decision in the *Union Pacific* case be properly resolved.

The glaring inconsistency of the above-mentioned Court of Claims decisions is readily apparent. In *Union Pacific,* the Court held that in determining the amount *paid in to and* received by a corporation upon the conversion of its bonds to stock, the *value* of the bonds at the time of conversion is immaterial, rather the paid-in capital received by the corporation is to be limited to the amount originally paid in for the bonds; notwithstanding the fact that the *value* of the bonds at the time of conversion exceeded the amount originally paid in for the bonds. On the other hand, in *Missouri Pacific* that selfsame Court held that in determining the amount *paid in to and received* by a corporation upon the issuance of its bonds for its securities, the amount originally paid in for the securities must be disregarded,

the measure being the *value* of the securities at the time they are paid in *when such value is in excess of the amount originally received.*

It is to resolve this conflict in an area of prime economic importance that Union Pacific Railroad urges that the petition for writ of certiorari in Docket 1333 be granted.

Respectfully submitted,

ROBERT J. CASEY

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